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LABOUR AND EMPLOYMENT DEPARTMENT

The 17th May, 1967

No. 3629-3Lab-67/12834.—In pursuance of the provisions of section 7 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and Management of M/s Pundenwala Metal Works and Rolling Mills, Jagadhri.

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

REFERENCE NO. 9 OF 1967
between

THE WORKMEN AND THE MANAGEMENT OF M/S POUNDENWALA METAL
WORKS AND ROLLING MILLS, JAGADHRI

Present:—

Shri Madhu Sudan Sharan on behalf of the workmen.
Nemo, for the management.

AWARD

An industrial dispute having come into existence between the workmen and the management of M/s Pundenwala Metal Works and Rolling Mills, Jagadhri, the appropriate Government by means of their Gazette Notification No. 434-SF-3-Lab-1-66/19472, dated 23rd June, 1966 and in exercise of the powers conferred on them by Section 10(1)(c) read with the proviso to that sub-section of the Industrial Disputes Act, 1947 referred to the Labour Court, Jullundur the matter mentioned below :—

Whether the management be required to abolish contract system in the following Departments/Sections ? If so with what details ?

- (1) Rolling.
- (2) Galai.
- (3) Lathe.
- (4) Ghilai.
- (5) Pressing.
- (6) Cutting.
- (7) Niara.
- (8) Podabedai.

This reference was registered by that Court as its Reference No. 101 of 1966. On the re-organisation of the old State of Punjab, this reference stands transferred to this Court and has been registered as this Court's Reference No. 9 of 1967.

Usual notices were issued to the parties and in response thereto the workmen filed a statement of their claim and the management filed their written statement. On behalf of the workmen it has been pleaded that the work in the Departments/Sections of the respondent concern mentioned in the order of reference is of a permanent nature and lasts throughout the year and that to get work done in these departments/sections through contractors is an unfair labour practice on the part of the management. It has been pleaded that the employees of the contractors do not enjoy the same facilities and benefits which would have accrued to them under the various labour laws if these employees had been the direct employees of the respondent concern. It has been pleaded that the contract system should be abolished by the management and the work in the various departments/sections should be got done by them through direct employees.

The management in their written statement do not deny that the work done in the various departments/sections of their concern mentioned in the order of reference is of a permanent nature. Nor do they deny that the employees of the contractors do not get the same facilities and benefits under the labour laws which the direct employees of the management of the respondent concern get. It has been pleaded that the contract system is prevailing in other factories also. It has also been pleaded that the abolition of the contract system is against the guarantees given by the Indian Constitution.

The following issue was framed in the case on 15th March, 1967 :—

Whether the management be required to abolish contract system in the following departments/sections ? If so with what details ?

- (1) Rolling.
- (2) Galai.

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- (3) Lathe.
- (4) Ghilai.
- (5) Pressing.
- (6) Cutting.
- (7) Niara.
- (8) Rodabedai.

On that date Shri Harbans Singh partner and manager of the respondent concern was present at the hearing on behalf of the management. The case was adjourned to 20th April, 1967 for the evidence of the parties on the above issue. On 20th April, 1967 no one was present on behalf of the management. The record shows that a letter dated 10th April, 1967 was received from the management in this Court on 15th April, 1967. In this letter the management have stated as follows :—

“In reply to your letter under reference it is respectfully submitted that we appeared in your court on 15th March, 1967 and next date was given 20th April, 1967 for our appearance in the above case.

In the above respect we wish to inform your honour that our factory is lying/closed and have not a single employee either labour or contractor. I am an old man with weak eye sight, so I am unable to report of the said appointed date, which please note.”

The above letter shows that the management were not interested in contesting the case. They had full knowledge that the case was fixed for the evidence of the parties on 20th April, 1967, yet they did not care to send any representative at the hearing on that date. The case was accordingly proceeded against the management under rule 22 of the Industrial Disputes (Punjab) Rules, 1958 and the evidence of the workmen was recorded. The workmen have produced two witnesses Sarvshri Asa Nand and Ramji Lal. Shri Asa Nand is an ex-employee of the respondent concern. He has deposed that the work done in the manufacturing processes of Rolling, Galai, Lathe, Ghilai, Pressing, Cutting, Niara and Roda Bedai is of a permanent nature. He has further deposed that the work in all these processes is got done by the management through contractors for the last two or three years. He has also stated that the employees of the contractors do not get those benefits and facilities which accrue to them under the labour laws if they had been the direct employees of the respondent concern. He has further stated that like the respondent factory M/s Shibu Metal Works, Jagadhri, M/s Vishavkarma Metal Works, Jagadhri and M/s Sawan Mal Mengha Singh, Jagadhri are also engaged in the manufacturing of utensils and also the processes mentioned by the witness above are done in those concerns also. He has further deposed that in those concerns the work in those processes used to be done through contractors but the contract system in those concerns has been abolished by the Labour Court and the Labour Tribunal. Shri Ramji Lal the other witness corroborates the testimony of Shri Asa Nand to some extent. The management have not chosen to produce any evidence. In their written statement they do not deny that the manufacturing processes mentioned in the order of reference are of a permanent nature in their concern and they are getting the work done in those processes through the contractors. Exhibit W/1 is an award given by the Industrial Tribunal, Punjab, in an industrial dispute between the workmen and the management of M/s Shibu Metal Works, Jagadhri. This award is dated 15th April, 1963. By this award, the Industrial Tribunal, Punjab abolished the contract system in the factory of M/s Shibu Metal Works, Jagadhri, in the departments/sections of Ghilai, Lathe and Press. The case went up to the Supreme Court and their Lordships of the Supreme Court up held the decision of the Industrial Tribunal, Punjab. The Supreme Court's judgement is reported as 1966-1-LLJ-717. Their Lordships have quoted with approval in that judgement the following observations made in the report of Royal Commission on Labour in India :—

“Whatever the merits of the system in primitive times, it is now desirable if the management has to discharge completely the complex responsibilities laid down upon it by law and by equity, that the manager should have full control over the selection, hours of work and payment of the workers.”

It appears to me that at the time the industrial dispute between the workmen and the management of M/s Shibu Metal Works, Jagadhri, relating to the abolition of the contract system in the departments of Ghilai, Lathe and Press arose, the work in the other departments/sections of that concern was got done through direct employees. By the time the first industrial dispute had been finally decided, the management of that concern appear to have introduced the contract system in their other departments/sections, namely, Smelting, Cutting, Rolling, Tinning, etc. The workmen raised a fresh industrial dispute for the abolition of the contract system in those departments also and that industrial dispute was referred for adjudication to

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this Court as this Court's reference No. 62 of 64. This Court by its award dated 29th June, 1966 abolished the contract system in M/s Shibu Metal Works, Jagadhri, in those departments/sections also. This award has been published in the *Punjab State Government Gazette*, dated 22nd July, 1966 as Notification No. 8168-III-Lab-1-66/21429 and is Exhibit W/2. The learned representative of the workmen has also drawn my attention to the *Haryana Government Gazette* dated 11th April, 1967 (Pages 159 to 161) on which an award of the Industrial Tribunal, Haryana, Chandigarh, relating to an industrial dispute regarding the abolition of the contract system in the departments of Melting, Cutting, Scratching, Jodai, Lathe and Pressing in the factory of M/s Vishavkarma Metal Works, Jagadhri has been published. The learned Presiding Officer of the Industrial Tribunal, Haryana by means of this award has been pleased to abolish the contract system in the various departments of that factory. He has relied on the judgement of the Supreme Court relating to M/s Shibu Metal Works, Jagadhri and reported as 1966-I-LLJ-717. M/s Vishavkarma Metal Works, Jagadhri are doing the same kind of work which the respondent factory does. This award is Exhibit W/3. I have not been able to appreciate the plea of the respondent management in their written statement that the abolition of the contract system would be against the provisions of the Indian Constitution. If that were so, the Supreme Court of India would not have ordered the abolition of contract system in several cases.

I am satisfied that the present case is of the type already decided by me by my award dated 29th June, 1966 given in Reference No. 62 of 1964 in the industrial dispute between the workmen and the management of M/s Shibu Metal Works, Jagadhri. There is absolutely no justification for the management of the respondent factory to retain the contract system in the departments/sections mentioned in the order of reference and I direct the management to abolish the contract system in these departments/sections. There will be no contract system in the respondent factory in these departments/sections on the expiry of a period of six months from the date on which this award becomes enforceable under Section 17-A of the Industrial Disputes Act, 1947. As the case has not been contested by the respondent management, I leave the parties to bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour, as required under Section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,
Presiding Officer,
Labour Court, Rohtak.

Dated 30th April, 1967

No.3633-3-Lab-67/12836.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of M/s Singhson Radio Co., 19-Industrial Area, Faridabad:—

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT,
ROHTAK
Reference No. 5 of 1967

between

THE WORKMEN AND THE MANAGEMENT OF M/S SINGH SON RADIO CO.,
19, INDUSTRIAL AREA, FARIDABAD.

Present—

Shri Duli Chand Claimant with Shri Darshan Singh on behalf of the workmen.
Shri D.C. Bhardwaj on behalf of the management.

AWARD

An industrial dispute having come into existence between the workmen and the management of M/S Singh Son Radio Co., 19-Industrial Area, Faridabad, the Government of Haryana by means of their gazette notification No. 40-SF-III-Lab-67/2074, dated 20th January, 1967 and in exercise of the powers conferred on them by Section 10 (1) (c) of the Industrial Disputes Act, 1947, have referred to this Court for adjudication the matter mentioned below:—

Whether the retrenchment of Shri Duli Chand Carpenter was justified and in order?
If not, to what relief/exact compensation he is entitled?

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Usual notices were issued to the parties and in response thereto the workmen filed their statement of claim and the respondent management filed their written statement. It was pleaded on behalf of the workmen that the retrenchment effected by the management was invalid as the alleged cause of retrenchment was not genuine. It was further pleaded that the retrenchment of the claimant Shri Duli Chand carpenter was invalid because he was senior to several carpenters who had been retained in service, while he had been retrenched on 8th November, 1966. It was further pleaded that Shri Duli Chand had been victimised by the management because he was a member of the union. The management pleaded that the claimant Shri Duli Chand joined their service at Rs. 120 P.M. as a carpenter with effect from 10th February, 1966 and being the junior most in his category was retrenched on 8th November, 1966. It was pleaded that the retrenchment was effected as a measure of re-organisation to effect economy and to reduce overhead expenses and as the management had decided to close down the Transistor Section and to reduce the strength of the Cabinet Section as these two Sections were running uneconomically. It has been pleaded that in all five persons had been retrenched on 8th November, 1966 and necessary form 'P' was sent to the authorities.

The following issues were framed in the case:—

1. Whether the retrenchment of Shri Duli Chand, carpenter, was justified and in order?
2. Whether Shri Duli Chand has been victimised by the management on account of his trade union activities?
3. Relief?

Issue No. 1 On behalf of the workmen the retrenchment of Shri Duli Chand, carpenter, has been challenged on two grounds. It has been urged that the reasons for the retrenchment as alleged by the management are not genuine and the before the retrenchment is not bona-fide. It has also been urged that some carpenters who were juniors in service to Shri Duli Chand claimant were retained in service on 8th November, 1966 when the claimant was retrenched. After perusal of the entire material on the record and hearing the arguments of, the parties I am of the view that both the grounds alleged by the workmen have force. In the form 'P' alleged to have been sent by the management to the authorities concerned (although no documentary proof of this form having been sent to the authorities has been produced by the management), the reason for the retrenchment is stated to be as follows:—

“As a measure of reorganisation to effect economy and to reduce overhead expenses, we have decided to close down Transistor Section as well as the belonging Transistor Cabinet Section. This section was running uneconomic and we could not face out throat competition in the goods manufactured therein.”

The only evidence which the management have produced to prove issue No. 1, the burdon of proving of which was on them is the bald statement of Shri Harcharan Singh Paul, who is said to have been the manager of the the respondent factory for about nine months. No record has been produced by the management in support of the bald statement of Shri Harcharan Singh Paul. If in fact the retrenchment had been made as a measure of reorganisation to effect economy and to reduce the overhead expenses, this fact could have been satisfactorily proved by the management by producing the relevant record to show that the continuance of the Section alleged to have been closed by them would have been uneconomic. On the other hand it is in evidence that during last four years the management had been disbursing bonus to their employees each year at a rate higher than in the previous year. Shri Romesh Chander one of the senior carpenters of the respondent factory has appeared as a witness in these proceedings on behalf of the workmen. He has stated that for the last two years the management had given bonus equal to thirty-two days wages for each year and that for the previous year they had given bonus equal to twenty days wages and for the previous to that equal to ten days wages. This shows an improving and not a deteriorating rating economic condition of the respondent factory. In this testimony before this Court Shri Harcharan Singh Paul has given a different reason for the retrenchment. He has stated as follows:—

“We effected retrenchment because the sale of our manufactured items had gone down and even the then existing orders were cancelled by some of our customers.”

He admits that he had not brought with him any record to support this statement of his. The form 'P' shows that the total strength of the workmen of the respondent factory was 198. Although the retrenchment is stated to have been effected as a measure of re-organisation to effect economy and to reduce overhead expenses, Shri Harcharan Singh Paul admits in his testimony that the management did not effect any retrenchment amongst the clerical and the supervisory staff. He also admits that excepting retrenching two carpenters, one fitter and two painters, they did not effect retrenchment in other categories of their 198 workmen. The management have utterly failed to prove that the causes of the retrenchment alleged

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them were genuine. I have not at all been impressed by the testimony of Shri Harcaharn Singh Paul. The workmen's case is that Sarvshri Mohinder Singh, Shera and Ajit Singh carpenters were junior in service to Shri Duli Chand carpenter but they were not retrenched on 8th November, 1966, when Shri Duli Chand was retrenched. It is very significant that the management have not produced in these proceedings a seniority list of all the carpenters working in their factory on 8th November, 1966, when the claimant Shri Duli Chand was retrenched. The seniority list Ex. RP/1 produced by them relates only to the five carpenters who are admittedly senior to the claimant Shri Duli Chand. There is absolutely no dispute regarding the seniority of the five carpenters mentioned in this list *qua* the claimant Shri Duli Chand carpenter. A specific question was put to Shri Harcharan Singh Paul manager of the respondent concern in cross examination by the workmen as to the date of appointment of Shri Mohinder Singh. He merely excused himself by saying that he could not tell the date of appointment of Shri Mohinder Singh carpenter. To me it appeared that he was suppressing the truth. Shri D.C. Bhardwaj learned authorised representative of the management had to concede during his arguments that Shri Moninder Singh carpenter was junior in service to the claimant Shri Duli Chand carpenter. The claimant Shri Duli Chand has gone into the witness box himself and has also produced Shri Romesh Chander carpenter as a witness on his behalf. Shri Romesh Chander is a senior carpenter of the respondent factory and his name appears in Ex. RP/1 produced by the management. Both Sarvshri Duli Chand and Romesh Chander have stated in their testimony that Mohinder Singh, Shera and Ajit Singh carpenters were junior in service to Shri Duli Chand claimant but were not retrenched on 8th November, 1966. On behalf of the management it is not denied that Sarvshri Shera and Ajit Singh were junior in service to Shri Duli Chand carpenter. It is urged on behalf of the management that Shri Shera was working as a carpenter on the building side and not in the Cabinet Section where Shri Duli Chand used to work. The evidence produced by the workmen shows that these were interchangeable posts. As regards Shri Ajit Singh the management's case is that he is employed as a fitter and not as a carpenter. The testimony of Shri Romesh Chander shows that Shri Ajit Singh was transferred to the fitting side only two days before the retrenchment of Shri Duli Chand. Before that he used to work as a carpenter. There was, therefore, force in the contention of the representative of the workmen that Shri Ajit Singh had been transferred to the fitting side a couple of days before retrenching Shri Duli Chand only to give a colour of validity to the retrenchment of Shri Duli Chand carpenter. I am inclined to agree with the workmen's contention that Shri Duli Chand carpenter was not the junior most carpenter in the respondent factory on the date of his retrenchment but there were some other carpenters junior to him who were not retrenched on 8th November, 1966. The fact that those carpenters were retrenched subsequent to the retrenchment of Shri Duli Chand claimant cannot validate the retrenchment of Shri Duli Chand claimant. The onus of proving that the retrenchment of Shri Duli Chand carpenter was justified and in order was on the management and on the evidence on record they have failed to discharge that onus. I, therefore, decide issue No. 1 against the management and in favour of the workmen.

Issue No. 2.—There is absolutely no positive evidence on the record to prove that Shri Duli Chand has been victimised by the management on account of his trade union activities. The mere fact that he happens to be a member of the union does not prove victimisation by the management. Shri Duli Chand has admitted in his testimony that practically all the workmen of the respondent factory are members of the union. I decide Issue No. 2 against the workmen and in favour of the management.

Issue No. 3.—As the management have failed to prove that the retrenchment of Shri Duli Chand carpenter was justified and in order, Shri Duli Chand is entitled to reinstatement by the management with continuity of service and with full back wages from the date of his retrenchment, viz., 8th November, 1966, to the date he is reinstated in service by the management. He shall report for duty to the management within fifteen days from the date this award becomes enforceable under section 17-A of the Industrial Disputes Act, 1947. The parties are left to bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour, as required under section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,

Presiding Officer,
Labour Court, Rohtak.

Dated 3rd May, 1967.

No. 3631-3Lab-67/12838.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect

of the dispute between the workmen and management of M/s Elofic Industries, Mathura Road, Faridabad.

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT,
ROHTAK

Reference No. 56 of 1966

Between

THE WORKMEN AND THE MANAGEMENT OF M/S ELOFIC INDUSTRIES,
MATHURA ROAD, FARIDABAD

Present.—

Shri Ram Khilawan claimant in person. Nemo on behalf of the other claimants of the union.

Shri S.L. Gupta on behalf of the management.

AWARD

An industrial dispute having arisen between the workmen and the management of M/s Elofic Industries, Mathura Road, Faridabad, the Government of Haryana by means of their Gazette notification No. 27-SF-III-Lab-66/1132, dated 19th November, 1966, and in exercise of the powers conferred on them by section 10(1)(c) of the Industrial Disputes Act, 1947, have referred to this Court for adjudication the matter mentioned below:—

Whether the termination of services of Sarvshri Gaya Parshad, Gauri Shankar and Ram Khilawan was justified and in order ? If not, to what relief they are entitled ?

Usual notices were issued to the parties, i.e., the General Secretary, Elofic Workers Union, Faridabad and the management of M/s. Elofic Industries, Faridabad. Notices were sent under registered A.D., covers and were served on them and their acknowledgements received through the postal authorities are on record. These notices were sent for 15th December, 1966. On that date no one from the Elofic Industries Workers Union, Faridabad, was present on behalf of the workmen. The management were represented by their Assistant Manager Shri R.N. Sikka. One Shri Roshan Lal Sharma filed a statement of claim on behalf of the workmen. This statement of claim is not verified by any body and has been signed by Shri Roshan Lal Sharma himself. An objection was raised on behalf of the management that Shri Roshan Lal Sharma was not competent to appear on behalf of the workmen as he did not fall in any of the categories mentioned in section 36 of the Industrial Disputes Act, 1947. A preliminary issue was struck to the effect whether Shri Roshan Lal Sharma was competent to represent the workmen of Elofic Industries Workers Union, Faridabad, which was a party to the present dispute. Shri Roshan Lal Sharma took two dates the first for 15th January, 1967 and the second for 27th February, 1967, to produce evidence to show that he was competent to appear in these proceedings on behalf of the workmen. He, however, did not produce any evidence on this issue. He was not a member or office bearer of the Elofic Industries Workers Union, Faridabad, nor an office bearer of any federation to which the said union was affiliated. By my order dated 27th February, 1967, I, therefore, held that Shri Roshan Lal Sharma was not competent to represent the workmen in these proceedings and the workmen were proceeded against under rule 22 of the Industrial Disputes (Punjab) Rules, 1958, as if they had appeared. The following issue was then framed in the case :—

Whether the termination of services of Sarvshri Gaya Parshad, Gauri Shankar and Ram Khilawan was justified and in order ? If not, to what relief they are entitled ?

The management's case as put in their written statement dated 28th December, 1966, is that Sarvshri Gaya Parshad, Gauri Shankar and Ram Khilawan were charged with certain misconducts and their services were terminated by the management after a proper and fair domestic enquiry. It has been further claimed by the management that these three workmen are gainfully employed since the termination of their services in other concern. It has, therefore, been stated by the management that the termination of services of the three claimants by the management was justified and in order and the claimants were not entitled to reinstatement or any other relief.

Shri S. L. Gupta the labour law advisor of the respondent concern has appeared as a witness in these proceedings on behalf of the management. He had been appointed as the Enquiry Officer to conduct the domestic enquiry against the claimants. He has filed and proved the proceedings of the enquiries and all other relevant documents. Sarvshri Gaya Parshad and Ram Khilawan claimants had been charged that on 27th February, 1966 they had kept all the workers of the factory away from the work from 8.30 a.m. to 9.30 a.m. by using threats, intimidation and pressure tactics thus bringing about an illegal strike putting the Respondent company to loss. A joint enquiry was held against Sarvshri Gaya Parshad and Ram Khilawan and a separate enquiry was held against Shri Gauri Shankar because the charges against him were different from those relating to the first two claimants.

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Shri Ram Khilawan was present before this Court on 29th April, 1967, the last hearing in the case. He admitted that Shri S.L. Gupta held an enquiry against him and Shri Gaya Parshad jointly. He also admits that Ex. M/2 was the charge-sheet issued to him by the management and Ex. M/4 was the explanation submitted by him to that charge-sheet. He further admits that Ex. M/6 is a copy of the letter he received from the management regarding the enquiry against him and Shri Gaya Parshad. He also admits that he and Shri Gaya Parshad were present in the enquiry when the witnesses of the management were examined by the Enquiry Officer and that copies of the statements of the witnesses were given to him and to Shri Gaya Parshad. Ex. M/1 is the charge-sheet issued to Shri Gaya Parshad and Ex. M/5 is the explanation submitted by him to the charge sheet. Ex. M/6 is a common letter issued both to Shri Gaya Parshad and Ram Khilawan regarding the appointment of the Enquiry Officer and the date on which they should appear before him. It appears that after the management's evidence had been recorded the two claimants Sarvshri Gaya Parshad and Ram Khilawan absented themselves from the enquiry. The management's case is that they absented themselves because they had no evidence to refute the charges levelled against them. The case as stated before this Court by Shri Ram Khilawan is that they did not absent themselves from the enquiry but the management and the Enquiry Officer did not allow their witnesses to appear on their behalf by threatening them as the witnesses belonged to the respondent factory itself. Shri S.L. Gupta in his testimony before this Court has stated that he issued several notices to these claimants to appear before him but they did not intentionally appear before him after the main evidence of the management had been recorded. Ultimately he proceeded *ex parte* against them and gave his finding on the evidence produced by the management alone. Shri Ram Khilawan in his statement before this Court has admitted that he received all the registered notices issued to him by the Enquiry Officer regarding the adjournments of the enquiry proceedings. In particular he admits the acknowledgement of the registered letter sent to him regarding the date of enquiry on which *ex parte* proceedings were ordered against him and Shri Gaya Parshad by the Enquiry Officer. I have no reason to disbelieve the evidence of Shri S.L. Gupta. He was justified in taking *ex parte* proceedings against the two claimants because they did not appear before him although he gave them several opportunities after the management had finished the evidence of their three witnesses. The Enquiry Officer on the evidence produced before him found the two claimants guilty of the charge levelled against them. The management agreed with the findings of the Enquiry Officer and dismissed these two claimants from their service by means of their letters Exs. M/9 and M/10 sent to these claimants.

As stated above a separate enquiry has been held against Shri Gauri Shankar. The charges against him are contained in Exs. M/11 and M/12. Shri Gauri Shankar gave his explanation Ex. M/13. Ex. M/14 is the letter sent to this claimant regarding the holding of the enquiry against him. The history of this claimant's case is also like that of the other two claimants. He also absented himself from the enquiry and the Enquiry Officer adjourned the enquiry on several occasions to persuade him to take part in the enquiry proceedings. Ultimately the Enquiry Officer proceeded *ex parte* against Shri Gauri Shankar and decided the case on the evidence produced by the management. His findings were against the workman and are contained in Ex. M/16. The management agreed with the findings of the Enquiry Officer and dismissed Shri Gauri Shankar by their letter Ex. M/23 -

In all the three cases the management have succeeded in proving that they had terminated the services of Sarvshri Gaya Parshad, Gauri Shankar and Ram Khilawan after proper and fair domestic enquiries. This Court is, therefore, bound by the enquiries held by the management. The termination of services of the three claimants is, therefore justified and in order and they are not entitled to the relief of reinstatement or any other relief. Their claims are dismissed. The parties are left to bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour as required under section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,

Dated 3rd May, 1967.

Presiding Officer,
Labour Court, Rohtak.

The 18th May, 1967

No. 3662-3Lab-67/12900.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of

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the dispute between the workmen and management of M/s Techno Hardware Enterprise (P) Ltd., Faridabad

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 60 of 1966

Between

The Workmen and The Management of M/s Techno Hardware enterprises (P) Ltd, Industrial Area, Faridabad.

Present.—

Shri Ram Parshad Singh, claimant in person, Nemo for the workmen.
Nemo for the management.

AWARD

An industrial dispute having arisen between the workmen and the management of M/s Techno Hardware Enterprises (P) Ltd., Industrial Area, Faridabad, the Government of Haryana by means of their gazette notification No. 59-SF-III-Lab-66/1975, dated 1st December, 1966 and in exercise of the powers conferred on them by Section 10 (1) (c) of the Industrial Disputes Act, 1947 have referred to this Court for adjudication the matter mentioned below.—

Whether the termination of services of Sarvshri Bateshwar Singh and Ram Parshad Singh was justified and in order? If not, to what relief/exact compensation they are entitled?

Usual notices were issued to the parties and in response thereto the workmen filed their statements of claims and the respondent management filed their written statement. It was pleaded on behalf of the workmen that the termination of the services of the two claimants Sarvshri Ram Parshad Singh and Bateshwar Singh was wrongful, illegal, against the principles of natural justice, mala-fide and a case of victimization and unfair labour practice on the part of the employers. It was pleaded that no notice for enquiry as given by the management to the claimants concerned or any enquiry held against them. In these circumstances it was claimed that the two claimants were entitled to re-instatement with continuity of service and full back wages.

The management in their written statement pleaded that Shri Ram Parshad Singh, claimant worked against the interests of the respondent factory in collusion with the other claimant Shri Bateshwar Singh and that he remained absent on leave or without leave occasionally. It was further pleaded that he destroyed a huge wire by his negligence. It was also pleaded that on 1st August, 1966 he came to the factory with a medical certificate from a private doctor but the management asked him to produce a medical certificate from the E.S.I. Medical Officer which Shri Ram Parshad Singh failed to produce in due time. It has been pleaded that the name of Shri Ram Parshad Singh was accordingly struck off by the management from their rolls. As regards Shri Bateshwar Singh the management pleaded that he was served a show cause notice on 4th June, 1966 for mishandling the wire-drawing section machine. It is pleaded that instead of giving any reply to the show cause notice, he went to his village in U.P. after receiving his pay and some advance money also. It has been further pleaded that on return from home Shri Bateshwar Singh worked against the interest of the respondent factory and committed mischief among the workers of his department and that when the other workers brought these facts to the notice of the management, the management immediately issued a letter to Shri Bateshwar Singh on 6th July, 1966 terminating his services. It has been further pleaded that the charges against Shri Bateshwar Singh were faulty operation of the machines, faulty wire-drawing, huge wastage of wire due to his negligence and his activities against the workers and the management of the factory.

The following issue was framed in the case :—

Whether the termination of services of Sarvshri Bateshwar Singh and Ram Parshad Singh was justified and in Order? If not, to what relief/exact compensation they are entitled?

The case was fixed for evidence of both the parties on 23rd March, 1967. On that day the parties took a date for settlement. On behalf of the management Shri Raman Lal, accountant was present. The case was adjourned to 30th March, 1967 in the Civil Rest House, Ballabgarh. On 30th March, 1967 no one was present on behalf of the management and the two claimants Sarvshri Ram Parshad Singh and Bateshwar Singh were present with Shri Roshan Lal Sharma on behalf of the workmen. As Shri Raman Lal, Accountant who was present on behalf of the management on 23rd March, 1967 did not hold any power of attorney from the management, at the hearing on 30th March, 1967 it was considered necessary to issue another registered A.D. notice to the management before proceeding *ex parte* against them. The case was accordingly adjourned for to-day here in the Civil Rest House, Ballabgarh. A registered A.D. notice to this effect was sent to the management and has been served

upon them and the acknowledgement is on record. No. one is, however, present on behalf of the management to-day. Proceedings under rule 22 of the Industrial Disputes (Punjab) Rules, 1958 were, therefore, taken against the management. Shri Ram Parshad Singh, claimant is present personally at to-day's hearing. Neither Shri Bateshwar Singh nor any body from the union is present at to-day's hearing although the case was adjourned for to-day in their presence at the last hearing Proceedings under Rule 22 of the Industrial disputes (Punjab) Rules, 1958 were, therefore, taken against Shri Bateshwar Singh and the union also.

Shri Ram Parshad Singh, claimant has made a lengthy statement on oath, before this Court to-day. He has stated that he was on leave for the period 1st August, 1966 to 6th August, 1966 because he was sick during this period. He has stated that he gave an application for leave accompanied by a medical certificate for this period and his leave was sanctioned by the management. He has further stated that when he reported for duty on 7th August, 1966, the management did not give him any duty and wanted him to sign an agreement that he was only a temporary employee of the management although he was a permanent employee having been in their service for eighteen or nineteen months. He has stated that he refused to accede to this unjustified request of the management whereupon they told him verbally that his services stood terminated. He has further stated that he was never issued any warning or chargesheet by the management and no enquiry was ever held against him before terminating his services. He has further stated that he never absented himself from duty without leave and that it was incorrect that had been working against the interests of the respondent factory in collusion with Shri Bateshwar Singh the other claimant. This evidence of

Shri Ram Parshad Singh stands unrebuted. In their written statement the management have admitted that this man produced a medical certificate from a private doctor on 1st August, 1966 but that they wanted him to produce a medical certificate from the E.S.I. Medical Officer and as the claimant failed to do so, his name was struck off the rolls. One nothing is clear that the management did not issue any charge sheet to Shri Ram Parshad Singh or held any enquiry against him before terminating his services. Assuming that the medical certificate produced by this claimant was not genuine and therefore the management were justified in asking him to produce a medical certificate from the E.S.I. Medical Officer, at the worst the claimant had absented himself without leave. Even for this misconduct his services could not be terminated unless he had been given a chance to give his explanation in the matter. The management did not issue him any show cause notice or held any enquiry against him and their straightway terminating his services was not legal and in order. I would go a step further and say that the testimony of Shri Ram Parshad Singh proves that he was absent on sick leave duly sanctioned in his favour after he had given an application for leave accompanied by a medical certificate. The management have not led any evidence in this case to disprove what Shri Ram Parshad Singh has stated on oath. The burden of proving that the termination of services of Shri Ram Parshad Singh was justified and in order was on the management and they have failed to discharge that onus. The termination of services of Shri Ram Parshad Singh, therefore, is not justified and in order. He is entitled to reinstatement by the management with continuity of service. The next question is as to whether he should be granted back wages and if so at what rate. Shri Ram Parshad Singh in his testimony before this Court to-day has stated that at the time of the termination of his services by the management he was getting Rs 132 P.M. from them. He has further admitted that for the last two months he has been working as a labourer and getting a daily wage of Rs 2.50 paise. There is no reason why he had been working as a labourer for two months only and not also for the remaining period after his services had been terminated. I think the ends of justice would be met if he is allowed only 50 per cent back wages from the date on which his services were terminated by the management to the date he is reinstated in service by the management. He shall report for duty to the management within fifteen days from the date on which this award becomes enforceable under section 17A of the Industrial Disputes Act, 1947.

As regards Shri Bateshwar Singh neither he nor any body on his behalf from the union was present at to-day's hearing although they had due notice of to-day's hearing as they were present before this Court at the last hearing. The management do not admit the claim. The claim of Shri Bateshwar Singh is, therefore, dismissed in default of appearance.

The parties will bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour as required under Section 16 of the Industrial Disputes Act, 1947.

Camp : Ballabgarh
Dated : 29th April, 1967.

HANS RAJ GUPTA
Presiding Officer,
Labour Court, Rohtak.